

Preparation for Implementing a Decision

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CHAPTER 1 – PURPOSE AND NEED FOR ACTION

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- **Describes the problem for which this draft environmental impact statement (DEIS) examines alternative solutions.**
 - **Outlines Bonneville Power Administration's (BPA) role, the scope of its involvement, and its decision factors.**
 - **Introduces the major participants and processes involved in addressing the problem.**
 - **Identifies the decisions to be supported by the final EIS.**
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1.1 INTRODUCTION

BPA is preparing this Fish and Wildlife Implementation Plan (FWIP) DEIS to examine the possible environmental consequences of its decision to implement and fund a Policy Direction for fish and wildlife mitigation and recovery efforts in the Pacific Northwest. These Policy Directions are reflected in the range of alternatives being considered in several key ongoing regional processes. The processes, described in Section 1.3.2, will shape and establish a regional fish and wildlife Policy Direction that BPA will use to guide its future mitigation and recovery efforts, including its funding for those efforts. BPA is preparing this DEIS now because (1) many species of fish and wildlife are already in serious condition (further delay must be minimized) and (b) BPA wants to be ready to respond promptly when a regional Policy Direction(s) is ripe for decision.

This DEIS is designed

- (1) to evaluate the range of potential Policy Directions** and possible implementing and funding actions that the region could decide to take for fish and wildlife mitigation and recovery efforts,
- (2) to identify what specific path** the Pacific Northwest most likely will take as a unified planning approach or as a series of independent actions by involved parties to try to recover fish and wildlife populations in the region, and
- (3) to determine the environmental consequences** of BPA's implementation and funding of the actions that could emerge from that policy.

An environmental impact statement is a document that presents analysis of the potential environmental effects of a major federal action and its reasonable alternatives. It is required by the National Environmental Policy Act (NEPA) when the consequences of that action may be significant. After public review and comment, the EIS is used by agency decisionmakers to select the best alternative for action to meet a defined need.

Resource Demands. The Pacific Northwest has long prided itself on its bountiful and diverse natural resources—its forests and grasslands, minerals and rivers, fish and wildlife. The region has also relied on these natural resources to serve multiple, and sometimes conflicting, uses. But human uses can compromise and severely deplete these resources, even eliminate them. The independent demands of human uses such as irrigation, municipal water supplies, fishing, electric power production, recreation, flood control, and transportation have placed increasing stress on the natural resources of the Columbia River Basin. One consequence is that, over the last decade, the number of fish and wildlife species listed as endangered or threatened under the Endangered Species Act (ESA) has dramatically increased.

Endangered: A species in danger of extinction throughout all or a significant portion of its range.

Threatened: A species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Recognizing this trend, the people and public and private interests of the Pacific Northwest have begun to try to mitigate these stresses—to improve the status of fish and wildlife and their habitat, especially those that are threatened or endangered. Mitigation, as defined by NEPA, can take several forms:

- avoiding actions that might have a negative impact,
- minimizing impacts by limiting human actions,
- rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
- working to preserve and maintain a resource, and
- compensating for the impact by replacing or providing substitute resources or environments.¹

Lack of Management Coordination. For several decades, a variety of federal, state, and tribal entities within the Pacific Northwest have been managing the Columbia River Basin's fish and wildlife resources. Each entity has its own legal constraints, policy directives, and jurisdictional limitations. There is no formally recognized "umbrella" organization or overall Policy Direction to help coordinate or reconcile the entities' respective actions. This situation has played an important role in keeping the region from reaching common goals to support a healthy self-sustaining fish and wildlife resource.

¹ CEQ, 1987: Section 1508.20.

The Fish and Wildlife Activity Map (Figure 1-1) shows the number and overlapping tangle of authorities.²

Policy Direction: *The overarching theme that guides and shapes the decisions made by governments, agencies, or other public bodies regarding fish and wildlife mitigation and recovery efforts, applied through a series of actions that form an implementing plan.*

Note *that BPA will select a Policy Direction, but any Policy Direction will be shaped by existing laws, regional processes, and other mandates that BPA must follow. These laws and mandates may change at any time in the future, as public opinion and priorities change, which could lead to corresponding modifications to any Policy Direction BPA may have chosen.*

Past Attempts to Address the Problem. Over the last ten years, the region has sought to stem and even reverse the species decline. Regional governmental entities, interest groups, and citizens have intensified their efforts to determine how best to address effects (impacts) on fish and wildlife populations.

Lack of Progress. Unfortunately, after a decade of good intentions, there has been less progress than necessary to reverse species declines. Here are the most important reasons:

- (1) **Different groups have different value judgments about priorities, leading to different (and often conflicting) ideas about what recovery and mitigation efforts should be.** For example, some groups want to maximize fish production, while others want to preserve biological diversity. Such conflicting ideologies have made reaching a consensus extremely difficult.
- (2) **There is no clear scientific answer to the problem.** Many factors affect the decline and recovery of fish and wildlife populations. Substantial scientific disagreement exists even today as to the best means to restore ecosystems and recover populations.
- (3) **Conflicting directives and jurisdictions of regional authorities have meant that funds dedicated to the fish and wildlife mitigation and recovery efforts have often been used less efficiently and effectively than they otherwise could have been.** The region has not been able to launch a coordinated mitigation and recovery plan. There have been delayed, inconsistent, piecemeal, and

² The figure is reproduced exactly as it was transcribed at a meeting to identify issues and interested parties. BR = Bureau of Reclamation; BIA = Bureau of Indian Affairs; Agri. = Department of Agriculture; FS/USFS = U.S. Forest Service; BLM = Bureau of Land Management; FWS = U.S. Fish & Wildlife Service; NMFS = National Marine Fisheries Service; CZES = Coastal Zone Estuary Study; COE = U.S. Army Corps of Engineers; NPPC = Northwest Power Planning Council; CBFWA = Columbia Basin Fish and Wildlife Authority; ESA = Endangered Species Act; HCP = Habitat Conservation Plan; FETMA = Forest Ecological Timber Management Assessment.

contradictory actions. Attempts to correct problems for one species have, in some cases, caused problems to increase for other species. The region has been unable to agree on how to gather or review information to determine whether certain actions are working, so that the actions can be stopped, amended, or expanded. This means that more money is spent than is necessary, and that more benefits could be obtained for the same amount of money.

Unified Planning Approach. Recently, however, regional entities have taken more steps to try to work together to develop a **comprehensive and coordinated planning approach for species recovery and mitigation efforts**. Any such approach must involve, for example, coordinating policies and programs under the ESA, the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act), the Clean Water Act (CWA), and trust and treaty obligations with the tribes, along with other obligations. A unified planning approach is based upon the premise that all fish and wildlife resources are interrelated parts of a singular ecosystem, and humans are integral components of the ecosystem through their many and diverse activities. Therefore, the needs of humans, fish, and wildlife must be addressed together and simultaneously. BPA supports this move toward a more unified planning approach, and is one of the many participants involved (see Section 1.3.1).

BPA is an agency of the U.S. Department of Energy. It wholesales electric power produced at 31 federal projects located in the Columbia-Snake River Basin in the northwestern United States, as well as the power from one non-federal nuclear plant. BPA is a co-manager of the Federal hydroelectric projects, but it does not own or operate them. BPA also promotes conservation and renewable resources. BPA is one of four federal power marketing agencies (PMAs) within the Department of Energy.

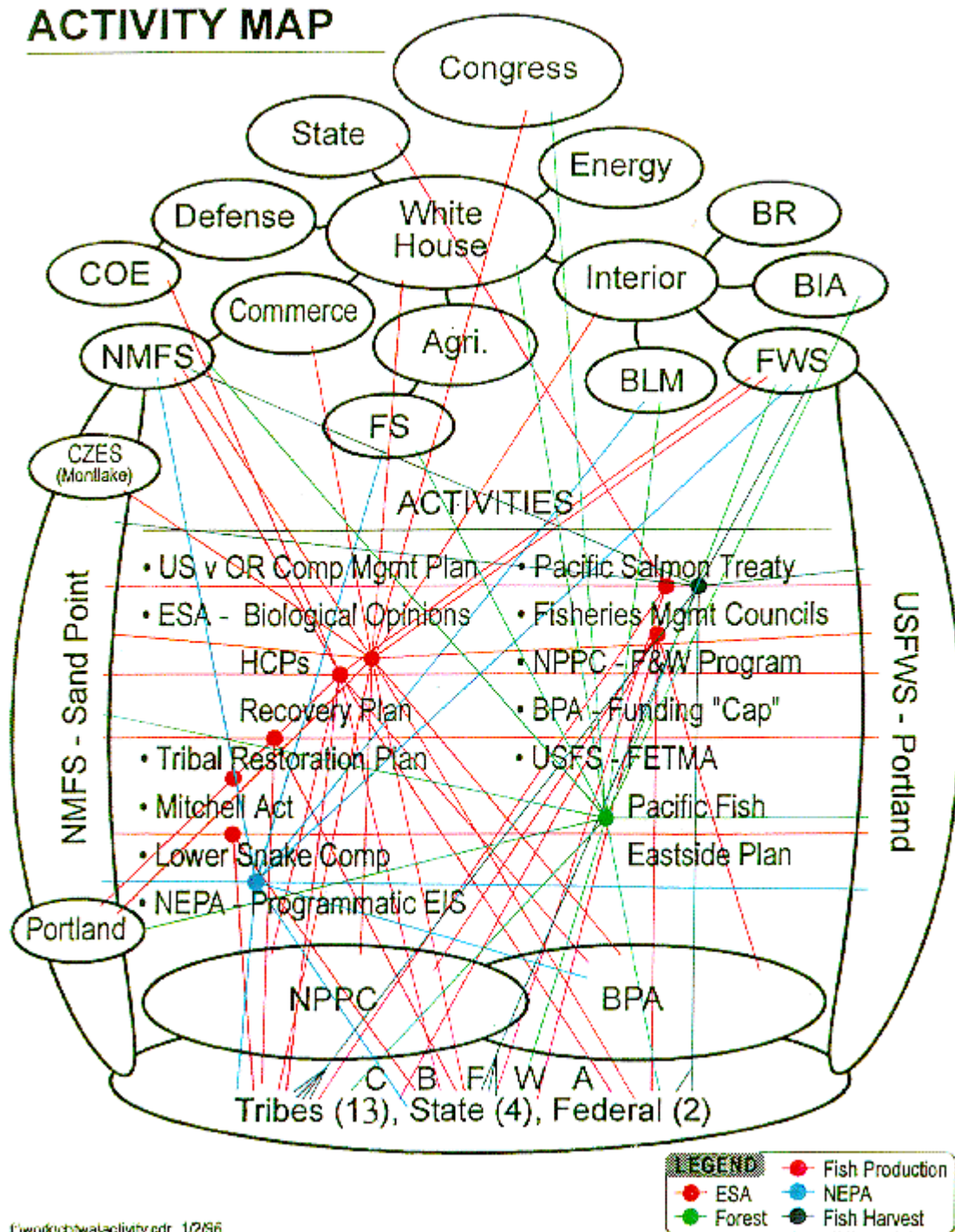
Today, BPA sells about 46% of the electric power consumed in its service territory, which includes the states of Oregon, Washington, Idaho, and the portion of Montana west of the Continental Divide. BPA also directly serves small portions of California, Nevada, Utah, and Wyoming. In addition, it sells surplus power to California and the Southwestern U.S. BPA's service territory covers approximately 775 000 square kilometers (300,000 square miles). To deliver that power, BPA owns and operates one of the largest high-voltage electrical transmission systems in the world, with over 15,000 miles of transmission lines.

BPA has certain roles and responsibilities in the fish and wildlife mitigation and recovery effort and in the unified planning approach:

- BPA must use ratepayer money to fund and implement certain fish and wildlife mitigation and recovery effort actions in accordance with its obligations under statute and law (e.g., under the ESA and Regional Act; see Section 1.2.1).

Figure 1-1

FISH & WILDLIFE ACTIVITY MAP



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NOTE: This diagram was an actual attempt in 1996 to capture the connections between the numerous complexities of the regional fish and wildlife activities.

- BPA recognizes it must take action in response to fish and wildlife policy, whether a unified planning approach is successfully developed and adopted (active policy selection) or whether the region just continues as it has in the recent past (default policy selection—status quo).

Because environmental analysis and public process will be necessary to fully inform BPA and the public of the consequences of funding and implementation of various actions, BPA has prepared this DEIS. BPA has decided to analyze a range of alternative Policy Directions to determine their environmental consequences as well as their potential effects on BPA's implementation and funding responsibilities.

It is important to understand what BPA is *not* doing in this DEIS:

- **BPA is not developing its own Policy Direction alternatives.** The alternative Policy Directions described and evaluated in this DEIS are based on *alternatives developed within the existing policy initiatives within the region*. We closely studied the proposals submitted by all the major participants in the many processes underway, followed the development of key issues, and sorted and grouped the ideas together by overall theme. We synthesized five Policy Directions (plus Status Quo—no change from the present approach), that encompass the wide range of options.
- **BPA is not unilaterally selecting a Regional Policy Direction.** Rather, this DEIS provides analysis of the full range of regional alternatives so that a funding and implementation strategy may proceed *regardless of the Policy Direction chosen*. A Policy Direction will be an outgrowth of several regional processes, whether those processes harmonize around a specific approach or diverge through independent regional actions. However, if the region fails to agree upon a Policy Direction, BPA still must implement and fund a fish and wildlife mitigation and recovery effort strategy (see Section 1.3.4).

Section 1.2 below focuses on BPA's role and its purpose and need in undertaking this environmental study. Section 1.3 lays out the background essential to understand the process itself, covering the major participants involved in the unified planning effort, the studies and environmental documents that support the current work, and the different processes that form the background and impetus for this DEIS.

1.2 BPA'S PURPOSES AND NEED

1.2.1 Need

BPA needs a comprehensive and consistent policy to guide its implementation and funding of fish and wildlife mitigation and recovery efforts.

BPA's fish and wildlife responsibilities spring from several sources:

- The Regional Act extended BPA's responsibilities to include development of energy conservation resources and enhancement of Northwest fish and wildlife that have been affected by construction and operation of the Federal Columbia River Power System (FCRPS).³ Under the Regional Act, BPA has specific duties:
 - (1) to protect, mitigate, and enhance fish and wildlife adversely affected by the construction and operation of the FCRPS, and
 - (2) to do so in a manner that provides equitable treatment for such fish and wildlife with the other purposes of the FCRPS.
- BPA also has specific duties under the ESA:
 - (1) BPA must avoid jeopardizing listed species,
 - (2) BPA must comply with incidental take statements (see discussion of "jeopardy" and "take" in the description of the ESA in section 2.3.2.1); and
 - (3) BPA must use its authorities to conserve listed species.
- BPA also recognizes that a trust responsibility derives from the historical relationship between the federal government and the tribes, as expressed in treaties, statutes, Executive Orders, and federal Indian case law. BPA is bound to uphold its share of the Indian trust and treaty responsibilities of the United States. The government's policy on trust and treaty responsibility to Columbia Basin tribes holds that the recovery of salmonid populations must achieve two goals:
 - (1) the recovery and delisting of salmonids listed under the ESA, and
 - (2) restoration of salmonid populations over time to a level that provides a sustainable harvest sufficient to allow for the meaningful exercise of tribal fishing rights.
- BPA's own Tribal Policy, adopted in 1996, provides that BPA will consult with tribal governments to assure that tribal rights and concerns are considered before BPA takes actions or makes decisions that may affect tribal resources. Objectives of these consultations include the following:
 - (1) protecting tribal lifestyles, culture, religion, and economy; and
 - (2) striving toward mutually agreeable decisions reflecting a consensus.
(USDOE/BPA, 1996)

The DEIS uses the phrase "mitigation and recovery" as shorthand for BPA's obligations to fish and wildlife under these and other laws.

³ The FCRPS includes 31 federal hydro projects, on the combined Columbia and Snake rivers, that are operated to provide hydroelectric power transmitted throughout the Pacific Northwest and, where there is surplus power, other nearby areas. The projects are operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation (not by BPA).

The Regional Act created the Northwest Power Planning Council (Council) with responsibilities to develop a Columbia River Basin Fish and Wildlife Program. BPA must decide whether and to what extent it will provide the actual *funding of the Program*, through its ratepayer revenues. Ratepayers, through BPA, are currently spending up to \$250 million annually for fish and wildlife. In addition, hydrosystem operation requirements for salmon recovery efforts have reduced power generation in the region by about 1,000 megawatts.

Although the Regional Act and ESA are those responsibilities perhaps most often mentioned in discussions involving BPA's fish and wildlife mitigation and recovery effort obligations, these statutes are but two of the statutes, regulations, and treaties that bear upon BPA's fish and wildlife mitigation and recovery efforts. Additionally, BPA is not the only Pacific Northwest entity with interests in, and activities affecting, fish and wildlife (see Section 1.3). Many other entities manage the Columbia River Basin's fish and wildlife resources, each with its own legal constraints, policy directives, and jurisdictional limitations. And there exists no agreed-upon regional plan for coordinating these mitigation and recovery efforts. This lack of coordination has serious consequences. For example, recovery efforts have experienced significant duplication and delay that detract from the region's ability to achieve a common goal, and ratepayer funds to support these efforts have been used less efficiently than is possible.

On behalf of the FCRPS, BPA currently funds a large share of the fish and wildlife mitigation and recovery efforts. BPA believes that a comprehensive and consistent policy would foster coordination and efficiency in fish and wildlife activities in the region. Accordingly, BPA is preparing this DEIS to examine the effects that may arise from implementing any of a range of fish and wildlife Policy Directions reflected in the alternatives generated by the key ongoing regional processes. Those processes will shape and establish a regional fish and wildlife Policy Direction that BPA will use to guide its future mitigation and recovery efforts, including its funding.

As noted earlier, BPA is *not* unilaterally formulating fish and wildlife policy. However, in the Final EIS, the Administrator will identify a preferred Policy Direction that supports the region's fish and wildlife mitigation and recovery efforts. Although this DEIS is intended for BPA decisionmaking, the analysis may also make it valuable for other regional entities that may adopt it as part of their own decisionmaking.

1.2.2 BPA's Purposes

BPA has an initial obligation in this DEIS to fulfill its NEPA requirements for understanding the environmental consequences of its actions (funding and implementing any Policy Direction) before decisions are made and any actions are taken. This NEPA compliance will allow BPA to:

- avoid delays in taking effective action, and
- provide an opportunity for public involvement for interested parties.

There are also some specific purposes BPA must consider. This DEIS must evaluate the alternative Policy Directions in terms of their consistency with federal and state laws, needs and responsibilities. BPA will use the purposes listed below as "yardsticks" to compare how well the alternative Policy Directions meet the agency's need:

- **Facilitate** implementation of a regional unified planning approach for fish and wildlife mitigation and recovery efforts that will improve:
 - coordination
 - efficiency, and
 - consistency.
- **Fulfill** statutory, legal obligations under the Regional Power Act, especially BPA's obligations to:
 - protect, mitigate, and enhance fish and wildlife, and
 - provide a reliable, adequate, efficient, and economical power supply.
- **Fulfill** the Administration's Fish Funding Principles (see **Appendix A**) such that BPA:
 - meets all of its fish and wildlife obligations, once established;
 - takes into account the full range of potential fish and wildlife costs;
 - demonstrates a high probability of Treasury repayment;⁴
 - minimizes rate effects on power and transmission customers;
 - adopts rates and contracts that are easy to implement; and
 - adopts a flexible fish and wildlife strategy.
- **Fulfill** other obligations under other applicable laws, including:
 - federal treaty and trust responsibilities with regional tribes:
 - the ESA,
 - the CWA, and
 - the National Historic Preservation Act (NHPA).
- **Promote** predictable and stable fish and wildlife costs and competitive rates, enhancing BPA's ability to provide funding for public benefits and remain competitive in the electric utility marketplace.

⁴Treasury repayment is a payment BPA makes annually to repay 1) monies BPA has borrowed from the U.S. Treasury and 2) appropriations to the Corps and Bureau for the share of capital construction allocated to the power purpose of the hydrosystem.

1.3 BACKGROUND

1.3.1 Major Participants

BPA is just one of the many interests in the region seeking an effective and balanced means to halt species decline and extinction and strengthen the overall health of the human environment in the Pacific Northwest. The major participants involved in the ongoing effort to reach an agreement on a unified planning approach and Policy Direction are identified in Figure 1-2 and described below:

- **The Executive Branch (President and Executive Offices) and Legislative Branch (Congress)** have an interest because there is a potential for change in national funding resources and because legislation may be required to implement certain Policy Directions.
- **Regional tribes** have express legal status via treaties and other federal laws, as well as economic, cultural, and religious interests, in any plan that may bear upon the future of fish and wildlife in the region.
- **BPA and other federal agencies** have direct or indirect responsibilities in fish and wildlife recovery and mitigation efforts as defined by various federal statutes and regulations (see **Appendix B**, Mission Statements and Statutory Table).
- **The Columbia River Basin Forum** (Forum) does not have formal legal status but is a group consisting of the representatives of sovereign governments involved in the region's decisionmaking for fish and wildlife—the federal agencies, four states (Washington, Oregon, Idaho, and Montana; via the Northwest Power Planning Council: see below), and regional tribes. The Forum was designed to develop an agreement for a fish and wildlife plan for the Pacific Northwest.
- **The Northwest Power Planning Council** (Council) was created by the Regional Act. It is made up of representatives from the four Northwest states. The Council develops and recommends measures for BPA to fund. These measures aim to mitigate for the effects of the FCRPS on fish and wildlife.
- **Individual States and Local Governments** are also important participants. The four Northwest states are represented through the Council; in addition, the Governors of Idaho, Montana, Oregon, and Washington have prepared a joint statement outlining their preferred strategy for recovery efforts: "Recommendations for the Protection and Restoration of Fish in the Columbia River Basin."⁵ The states enforce the CWA, in accordance with Environmental Protection Agency (EPA) guidelines. Local governments manage municipal water and waste and are involved in community-based projects such as watershed councils.
- **Other regional interests** include the many citizens and groups with a direct or indirect interest in the costs, strategies, and specific projects that may be involved in any plan to recover fish and wildlife populations. Some are interested in

⁵ Governors, 2000.

maintaining a certain way of life. Others rely on the resources of the Columbia Basin for their livelihood or business.

1.3.2 Scope and Related Processes

In response to the need for improved species survival and for a way to use limited funds most efficiently, the participants listed above (and others) have begun several related and wide-ranging processes with differing scopes (e.g., policy directions, geographic areas, and particular species) throughout the region.

These related processes and the associated documents are listed below. The listings include a description of the special mandates of each responsible agency; in some cases, they represent current policy regarding human effects on fish and wildlife. Figure 1-3 shows how the different scopes of the processes and documents relate.

- **Individual Processes:** At the top of the Figure are the many individual processes underway to address several of the fish and wildlife recovery effort issues. Any one of these processes—hatchery propagation of fish, habitat restoration and improvement, manipulation of the flow in the rivers (hydro), management of federal lands, breaching dams, and harvest controls—may help a particular aspect of the overall policy need; however, each falls short of offering a coordinated, comprehensive effort to address the whole problem.

Federal Caucus and the Conservation of Columbia Basin Fish: Building a Conceptual Recovery Plan (Conceptual Plan) and Conservation of Columbia Basin Fish: Final Basin-wide Salmon Recovery Strategy (Basin-wide Strategy)⁶: This process and documentation, a product of nine federal agencies

known as the Federal Caucus, focuses on four areas affecting the life cycle of anadromous fish: hatcheries, harvest, habitat, and the hydrosystem. The Basin-wide Strategy describes the comprehensive changes that are assumed to be needed to recover Columbia River Basin fish. This document outlines the strategies and specific actions that federal agencies operating within the Columbia River Basin should take to prevent extinction and foster recovery by improving survival across all life stages of ESA-listed anadromous fish evolutionarily significant units (ESUs). It also functions as a blueprint to guide federal actions and interactions with state and local governments and tribes as they take steps to comply with the ESA while exercising their authorities. BPA expects that recovery planning for listed anadromous fish will likely proceed along the lines discussed in the Basin-wide Strategy Paper.

The Basin-wide Strategy is incorporated into National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) recommendations through the Biological Opinions (BiOps) for actions that affect Columbia River Basin ESA-listed fish.

⁶ Federal Caucus 1999b, 2000b. These two documents were formerly known as the "All-H Plan"; they are the draft and final versions of the same study.

Figure 1-2: The Major Participants in Regional Columbia River Political Forum

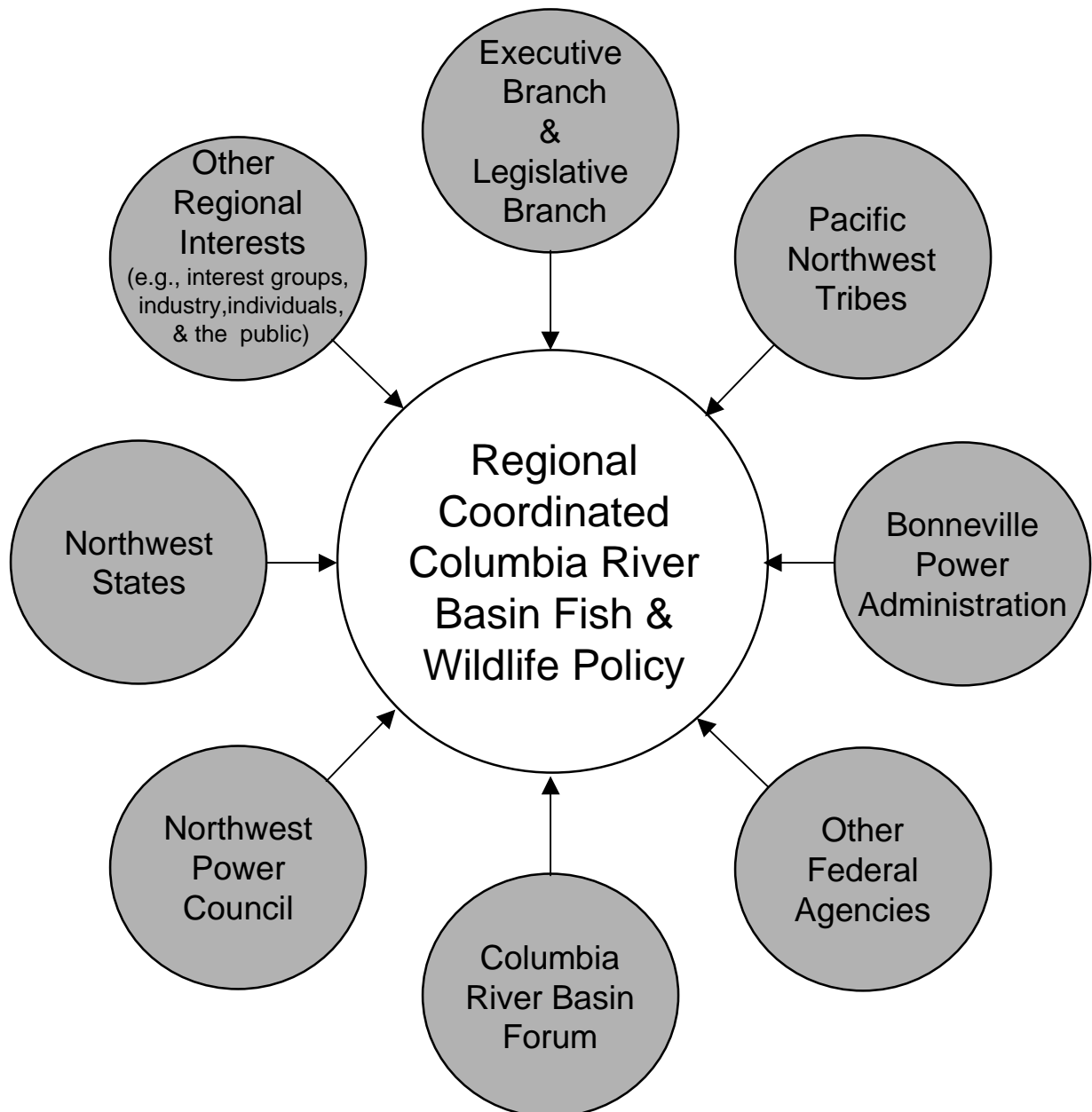
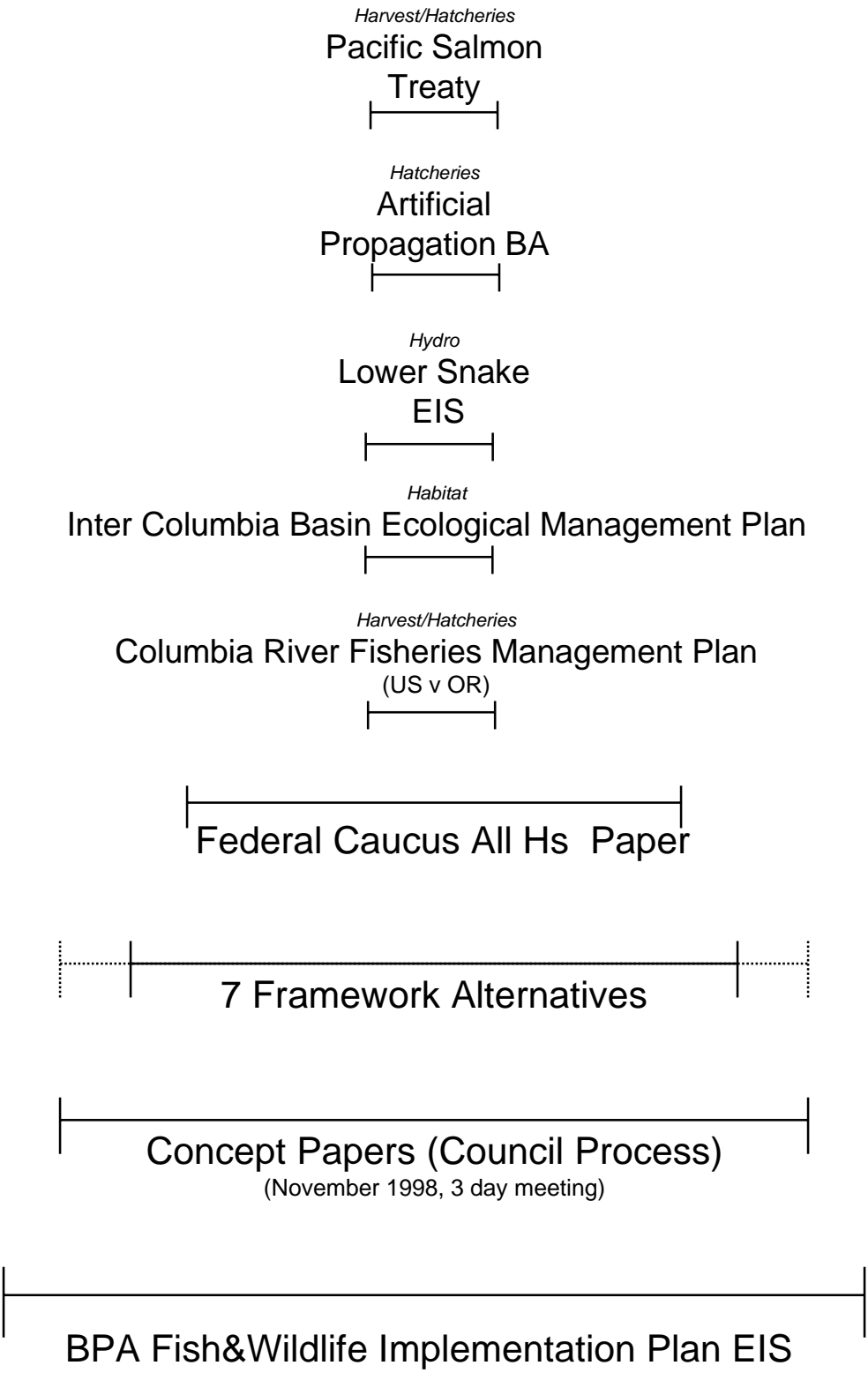


Figure 1-3: Breadth Of Scope



- **NMFS and USFWS Biological Opinions:** These agencies prepare Biological Opinions, as required by the ESA, for species under their respective authorities. BiOps describe the federal agency's determination as to whether proposed actions will jeopardize listed species. BiOps prepared for the FCRPS provide operating parameters for the action agencies—the U.S. Army Corps of Engineers (Corps), the Bureau of Reclamation (Bureau), and BPA. BiOps are also prepared on other actions affecting Columbia Basin fish and wildlife.
- **Recovery Planning⁷:** NMFS plans the recovery process for salmon and steelhead. The process includes the following:
 1. forming Technical Recovery teams to identify the de-listing criteria and recovery goals for an ESU, and
 2. developing Recovery Plans that describe actions needed to achieve the recovery goals and de-listing criteria.

Other federal agencies, states, tribes, and stakeholders cooperate with NMFS, so that the many interests and ongoing recovery processes at all levels can be recognized. As NMFS moves forward to develop recovery plans using the technical information, the agency will rely on those sources to complete the information. Subbasin plans will be “aggregated” to ensure the recovery of the entire ESU is provided for.

- **The Council's 2000 Columbia River Basin Fish and Wildlife Program:** The Council's Fish and Wildlife Program is the largest effort in the nation to recover, rebuild, and mitigate impacts on fish and wildlife. The 2000 (fifth) revision of the Program expresses goals and objectives for the entire Columbia River Basin, based on a scientific foundation of ecological principles. In the future, the Program will be implemented through both locally developed plans for the 58 subbasins of the Columbia River and a plan for the mainstem. Fish and wildlife projects proposed for BPA funding to implement the Council's Fish and Wildlife Program will originate from these subbasin plans. While those plans are being developed, the Council has provided for ongoing project review and for funding by BPA.
- **The Council's Multi-Species Framework Report:** In November 1998, to develop a framework for its Fish and Wildlife Program, the Council initiated the Multi-Species Framework Project—a more balanced, comprehensive approach to fish and wildlife recovery. The Framework Project was managed by a state-federal-tribal committee and administered by the Council. The Framework was tasked with addressing fish and wildlife recovery and mitigation for multiple species (not just ESA-listed species), exploring alternative long-term visions for the river, and preparing a report on the process.

⁷ Source: Federal Caucus, 2000b.

Twenty-eight fish and wildlife recovery proposals (Concept Papers) were submitted by interested parties, and over 100 fish and wildlife recovery actions were proposed. The Council developed seven Framework alternatives, describing those alternative long-term visions. A state-of-the-art analytical system, Ecosystem Diagnosis and Treatment (EDT), was used to address the biological benefits of each alternative; a separate Human Effects Analysis was used to address the economic and social impacts and benefits of the alternatives. Their report, which was completed in December 2000, was used to inform the Council's amendment of its Fish and Wildlife Program.

- **Fish Funding Principles:** In September 1998, former Vice-President Gore announced principles. These Principles were intended to help shape how BPA set its power marketing rates, and to ensure that BPA would meet all of its mitigation and recovery effort responsibilities, while simultaneously meeting its marketing and Treasury repayment responsibilities.⁸
- **The Council's 2001 Report on Bonneville Fish and Wildlife Expenditures.** In response to a request from the governors of Oregon, Washington, Idaho, and Montana, the Council has provided an accounting and brief assessment of BPA's fish and wildlife program implementation expenditures. The *Draft 2001 Report on Bonneville Fish and Wildlife Expenditures* found that, since 1978, BPA's costs totaled \$3.48 billion. Of that total, 76% has been spent on anadromous fish. For BPA's efforts, the region has seen a dramatic increase in in-river juvenile salmonid survival, increases in some resident fish populations, and mitigation for over 38% of the wildlife habitat inundated by the dams and reservoirs.
- **U.S. v. Oregon.** In 1968, the Columbia River treaty tribes and the United States brought this case against the state of Oregon, and later against the states of Washington and Idaho. It continues today, with jurisdiction residing in the Federal District Court of Oregon. It is the landmark case in which Judge Robert Belloni ruled that state management practices failed to meet the tribes' treaty-secured fishing rights, and that the tribes were entitled to take "a fair and equitable share" of the harvestable portion of the runs. Judge Belloni further ruled that the state can regulate the Indian fisheries only for purposes of conservation, and that those regulations cannot "discriminate against the Indians." Ultimately, the tribes won recognition of their right to an even split of the harvestable fish between treaty and non-treaty fisheries. They also won acceptance as fisheries co-managers. The 1988 Columbia River Fish Management Plan resulted from work under *U.S. v. Oregon*. The plan addressed issues such as the allocation of state and tribal harvests, fishing seasons, hatchery production, hatchery locations, and disposition of surplus returning adult salmonids of hatchery origins. The last plan expired in 1998 and has not yet been

⁸ BPA is authorized to borrow money from the U.S. Treasury to build facilities needed to carry out its mission. Because BPA is self-financing, these monies must be repaid. BPA is committed by law to meet its repayment responsibilities as well as its responsibilities to the environment

renegotiated. Judge Garr King (U.S. District Court of Oregon) now oversees the case and has continuing jurisdiction over it.

These many processes may result in the adoption of any one of many Policy Directions. Further, the selected policy may change, as technical issues are resolved. Therefore, the scope for BPA's DEIS must be broad enough to encompass any potential Policy Directions under consideration.

1.3.3 Incorporation by Reference of Supporting Federal Documents

Throughout the last decade, federal agencies in the region have developed and continue to prepare a number of plans and programs addressing fish and wildlife mitigation and recovery actions. They have also issued a series of EISs designed to evaluate alternatives and implement the selected actions. The environmental documents described below have been produced either by the participants listed in Section 1.3.1 or in the processes discussed above. All of these documents are used as resources in the preparation of this Fish and Wildlife Implementation Plan Draft EIS (FWIP DEIS) and are incorporated here by reference.

Resource Programs Final Environmental Impact Statement (DOE/EIS-0162, February 1993). This programmatic EIS evaluates the consequences of alternatives for energy resource development and operation and BPA energy resource acquisition (USDOE/BPA, 1993).

Business Plan Final Environmental Impact Statement (DOE/EIS-0183, June 1995). BPA prepared this EIS in response to the need for a sound policy to guide its business direction (including power marketing, rates, and administration of fish and wildlife activities) under changing market conditions (USDOE/BPA, 1995).

Columbia River System Operation Review Final Environmental Impact Statement (DOE/EIS-0170, November 1995). This EIS evaluates a range of system operating strategies for the multiple uses of the FCRPS (USDOE/BPA, Corps, and BOR, 1995).

Wildlife Mitigation Program Final Environmental Impact Statement (DOE/EIS-0246, March 1997). This EIS is used to standardize the planning and implementation of BPA-funded projects for mitigating loss of wildlife habitat caused by the FCRPS (USDOE/BPA, 1997b).

Watershed Management Program Final Environmental Impact Statement (DOE/EIS-0265, July 1997). The analyses in this EIS were used to standardize the planning and implementation of individual watershed management programs and projects funded by BPA as mitigation for the loss of resident and anadromous fish habitat caused by the FCRPS (USDOE/BPA, 1997a).

Lower Snake River Juvenile Salmon Migration Feasibility Study Draft Environmental Impact Statement (U.S. Army Corps of Engineers, October 1999).

This EIS assesses the effects on juvenile salmon migration of alternative hydro system configurations and operations at the four Lower Snake dams (Corps, 1999a).

Interior Columbia Basin Supplemental Final Environmental Impact Statement (U.S. Forest Service and Bureau of Land Management, December 2000). This stand-alone EIS analyzes three alternatives for the management of public lands in the interior Columbia River Basin. It supplements the two Draft Interior Columbia Basin Ecosystem Management Project EISs and reflects the more-than 83,000 comments received on those documents (USDA/USFS and USDO/BLM, 2000).

Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS-0285, May 2000). This BPA EIS assesses the uses and resource effects of different combinations of manual, mechanical, biological, and herbicide methods of managing vegetation on BPA rights-of-way, as well as mitigation measures for those effects (USDOE/BPA, 2000).

Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia River Basin Draft Programmatic Environmental Impact Statement (Columbia River Basin Fish and Wildlife Authority for Federal Agencies, December 1996). This document was prepared to evaluate alternative artificial production strategies for anadromous fish in the Columbia River Basin and the effects of hatchery-produced fish on natural populations of salmon and steelhead (CBFWA, 1996).

Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (U.S. Forest Service and Bureau of Land Management, February 1994). This EIS evaluates alternative management direction strategies for balancing forest habitat and forest products from forest ecosystems (USDO/USFS and BLM, 1994).

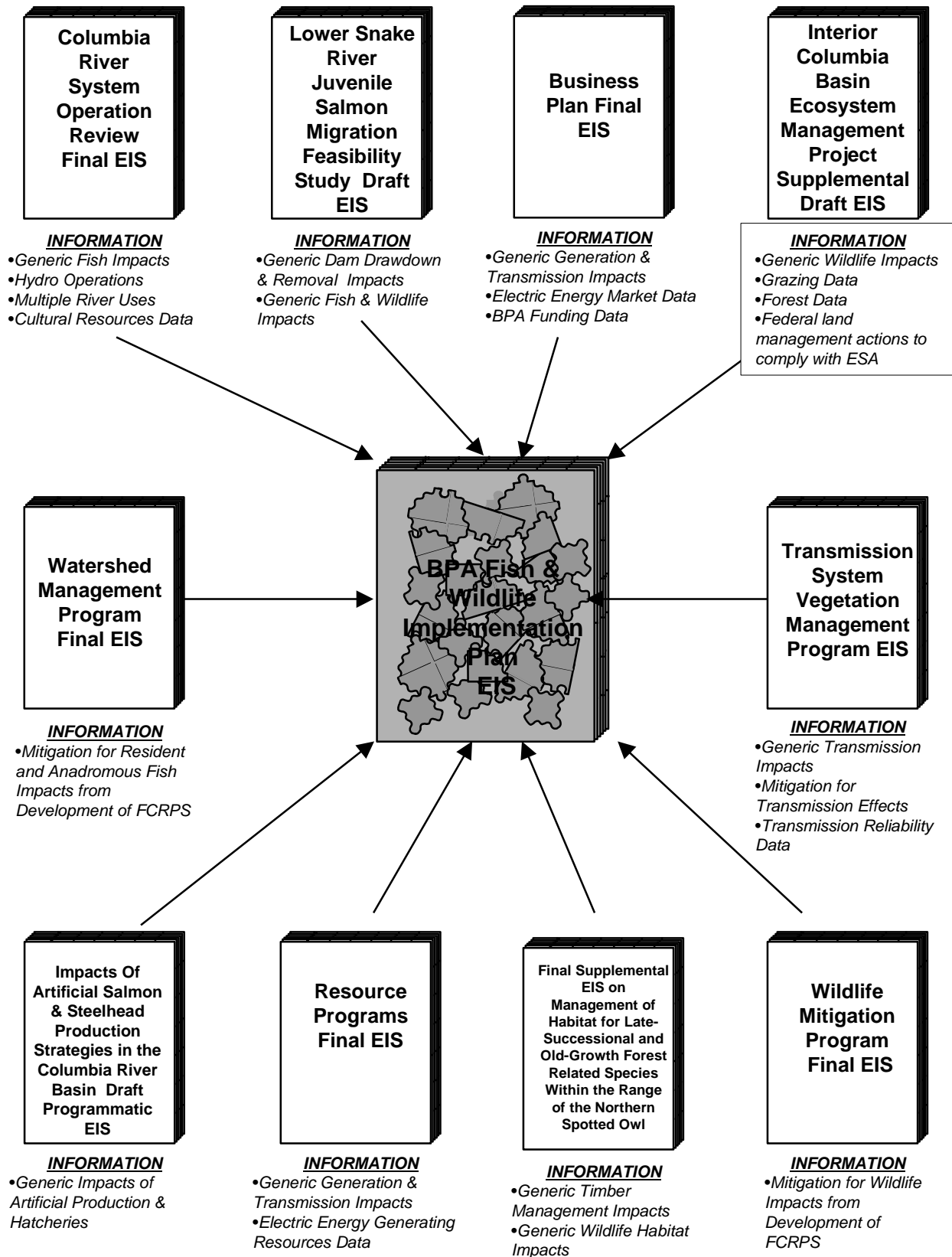
Delivery of the Canadian Entitlement Final Environmental Impact Statement (DOE/EIS-0197, January 1996). This EIS was prepared by the United States Entity (designated by the Columbia River Treaty between the United States and Canada as the BPA Administrator and the Corps' Division Engineer, North Pacific Division) for information on downstream power benefits. It is important to note that Executive Order 12114 does not require, but allows, examination of impacts outside of the United States (USDOE/BPA, 1996a).

Figure 1-4 shows the major elements that have been used from the documents above to help in the environmental analysis in this DEIS.

1.3.4 Policy by Unified Planning or by Uncoordinated Agency Action

The discussions above have outlined what has been taking place in the way of policy actions that affect (positively or negatively) the fish and wildlife resources of the Pacific Northwest. Regional policy regarding fish and wildlife recovery efforts has developed

Figure 1-4: Incorporation By Reference



through both deliberate action and by failure to choose (by default or inaction) (see Figure 1-5):

- Initially, actions to expand the electric power system were taken, and the policies underlying those actions developed, without a comprehensive evaluation of the long-term effects on fish and wildlife (policy by inaction or uncoordinated action)
- In 1980, Congress passed the Regional Act in part to give fish and wildlife equitable treatment with power production and other river uses (policy by *active decision*). This legislation was enacted to counter the uncoordinated, and sometimes nonexistent, nature of the fish and wildlife recovery effort actions.
- In 1991, NMFS declared Snake River sockeye an endangered species and, in 1992, ruled that the spring/summer and fall runs of Snake River chinook were threatened. In 1994, NMFS reclassified the Snake River chinook stocks as endangered. These rulings required the Federal operating agencies to consult with NMFS on annual river operating plans.
- Recently, a *technical/scientific exercise* has been underway to find “the solution.” However, science in this area is not yet sufficiently refined to resolve the many technical differences of *opinion* on reaching recovery status; in fact, it may never be sufficiently precise to meet everyone's satisfaction and to determine the sequence of steps to be taken.

Although science cannot yet point out a clear path, the region is still faced with the need to continuously define and redefine a policy for fish and wildlife. BPA, too, needs to plan how to spend wisely those ratepayer funds it commits to address fish and wildlife mitigation and recovery efforts, and how to operate effectively and more efficiently under either of two conditions:

- a policy developed by a regionally unified planning effort (and subject to public input and review), or
- a default policy emerging through separately developed and executed individual agency actions: the policy path that defines much of the region's past and present approach.

1.4 DECISIONMAKING PROCESS

The analysis provided here, in a formal, policy-level process and environmental document, will offer the public an opportunity to assess, participate in, and influence the selection of a regional alternative(s) for fish and wildlife mitigation and recovery effort plans, along with the regional decisionmakers.

1.4.1 Decision and Implementation through Tiering

By undertaking this DEIS as a complement to the other processes, BPA completes a comprehensive look at those regionwide processes. This DEIS will also provide a springboard for the Administrator, as well as other decisionmakers, to fund and implement actions consistent with the ultimate Policy Direction selected to support the

regional fish and wildlife recovery effort (whether by unified planning or by default), without further delay or reconsideration. This ability to "tier" decisions is an extremely valuable tool, especially when time is of the essence. Figure 1-6 shows tiered decisionmaking pursuant to NEPA. Below are details on how this "tiering" works.

- **The draft and final EISs.** First, this broadly scoped DEIS will evaluate the different Policy Directions available to decisionmakers. The evaluation will include trade-offs among resources and options to modify the basic Policy Direction(s), as well as ways to mitigate for effects. Publication of this DEIS signals the beginning of a public comment process. After considering the potential environmental consequences and mitigation, as well as public and agency comment, a Final EIS (FEIS) will be published. In the FEIS, the BPA Administrator will identify a preferred Policy Direction that encompasses the Policy Direction that the region is most likely going to follow (or that has already been selected in other forums or processes, or by other decisionmakers) and reflects consideration of the BPA Purposes.
- **The Record of Decision (ROD) on Policy Direction.** BPA will then prepare a ROD that documents and explains the basis for the Administrator's Policy Direction selection.
- **Tiered RODs.** The BPA Administrator may then "tier" decisions about the implementation of actions consistent with the same Policy Direction. BPA will continue to involve the public as it decides on different categories of specific implementation actions.
- **Documentation.** Other federal agencies, states, and/or tribes may find this DEIS and associated RODs useful with respect to related actions under their agencies' respective jurisdictions.

1.4.2 Potential Decisions to be Supported

The final FWIP EIS will support actions that BPA determines are necessary to comply with its responsibilities, including the following:

- Funding and implementing fish and wildlife mitigation and recovery efforts.
- Short or long-term FCRPS recommendations in the NMFS and USFWS BiOps.
- Funding of the Council's Fish and Wildlife Program, including
 - hatchery programs,
 - harvest measures funding,
 - habitat programs, and
 - hydrosystem programs.
- Capital improvements at FCRPS projects.
- Other fish and wildlife mitigation, recovery, and enhancement efforts:
 - research,

Figure 1-5: Policy Direction Process Cycle

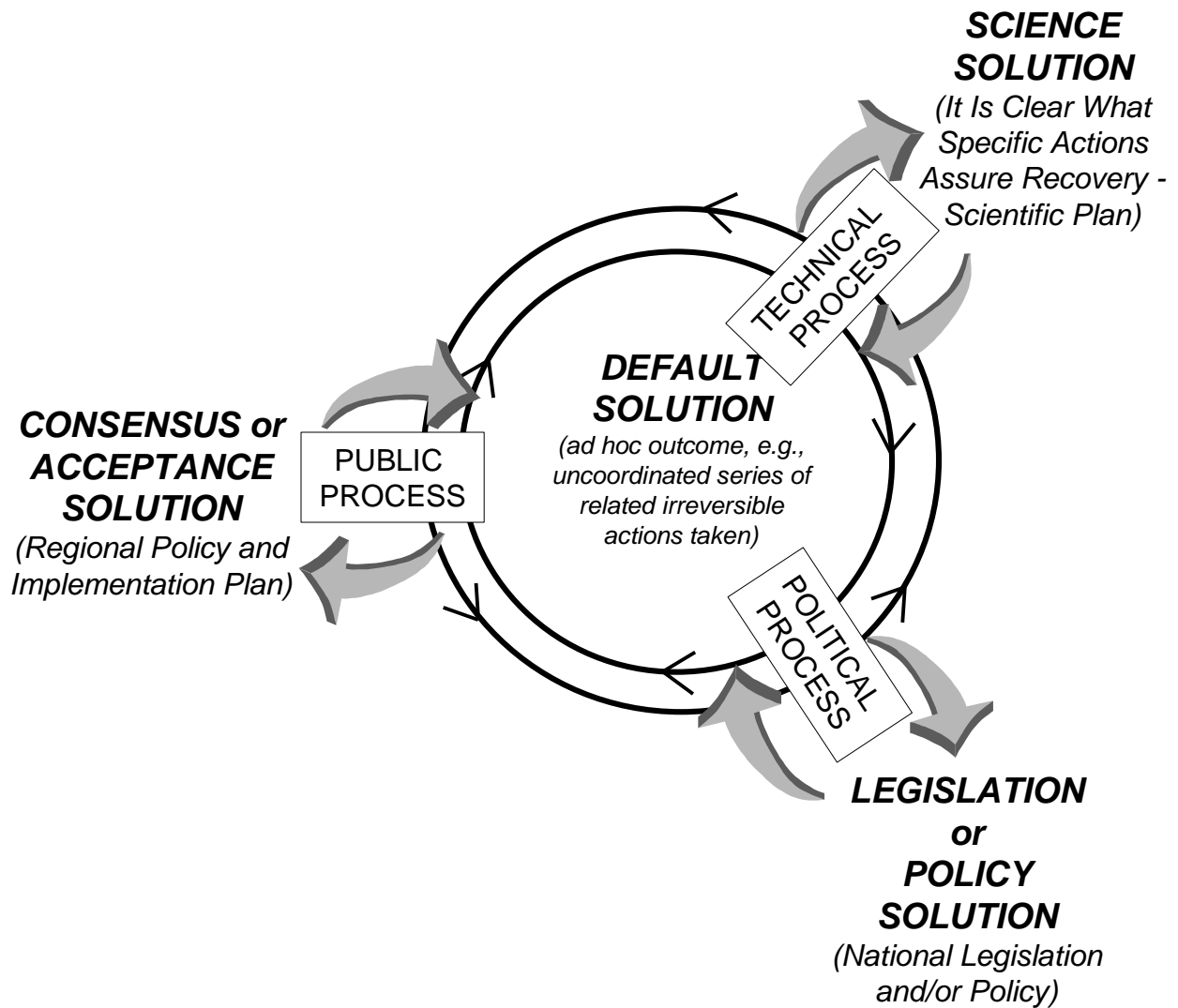
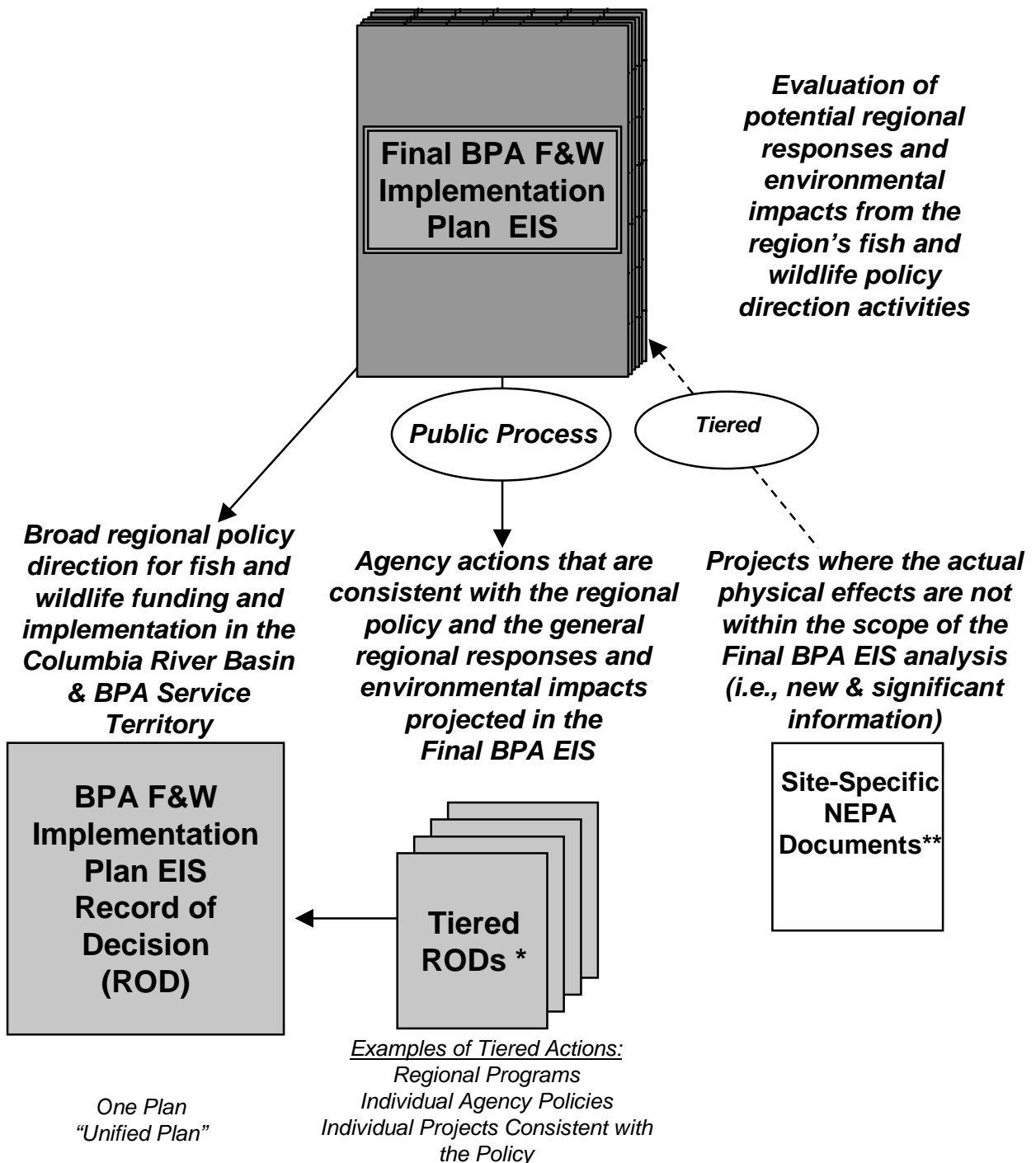


Figure 1-6: NEPA Decision Process Integration



* If BPA determines that the Final EIS adequately evaluates the environmental impacts of its future actions, then the preparation of additional or supplemental EISs would be unnecessary. Instead, BPA would prepare tiered RODs to cover the subsequent actions related to the policy ROD. In addition, if other agencies or entities find the Final BPA EIS adequate to cover their actions they could adopt the EIS and prepare RODs explaining their decisions and how the EIS analyzes the related environmental impacts.

** These documents could include categorical exclusions, environmental assessments, or environmental impact statements.

- monitoring and evaluation,
- education, and
- enforcement.
- Funding of cultural resource mitigation.

➡ **As a frame to understanding the alternative Policy Direction choices, Chapter 2 provides an outline history of active/default policy decisions that have affected Pacific Northwest natural resources over time.**

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